

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

THOMAS RAY NEWSOME, JR.,

Applicant,

v.

Civil No. 08-1180 MCA/RHS

T.B. HATCH, et al.,

Respondents.

**MAGISTRATE JUDGE’S RECOMMENDATION THAT
PETITIONER’S MOTION FOR INJUNCTION BE DENIED AS MOOT**

THIS MATTER comes before the Court on Petitioner’s Second Motion for Default and Immediate Release from Imprisonment, or for Immediate Injunction (“Motion for Injunction”), filed July 27, 2011 [**Doc. 34**]. Petitioner is proceeding *pro se* and *in forma pauperis*. Petitioner seeks an order enjoining “Respondent’s successors . . . from confiscat[ing] and/or destr[oying] . . . ALL of [Newsome’s] legal papers, and require their immediate return to Mr. Newsome in the same condition as when they were seized on 18 July 2011.” (Id. at 3).

Respondents apparently concede that Petitioner’s legal materials were confiscated on July 18, 2011. However, Respondents point to a memorandum from Unit Manager, Bob Miyagishima, to DW German Franco, as evidence that Petitioner’s legal materials were “most likely” returned to him on July 29, 2011. (Memo dated August 1, 2011, Ex. C, attached to Respondents’ Response to Order Directing Response to Petitioner’s Motion for Injunction (“Response”), filed Aug. 11, 2011 [**Doc. 37**]). Petitioner did not file a reply to Respondents’ Response.

Because it appears that Petitioner’s legal materials have been returned to him, the Court

respectfully recommends that Petitioner's Second Motion for Default and Immediate Release from Imprisonment, or for Immediate Injunction [**Doc. 34**] be **denied as moot**.

Within fourteen (14) days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to 28 U.S.C. § 636(b)(1), file written objections to such proposed findings and recommendations. A party must file any objections within the fourteen (14) day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.

Robert Hayes Scott

ROBERT HAYES SCOTT
UNITED STATES MAGISTRATE JUDGE